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**IN THE  
COURT OF APPEALS OF INDIANA**

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IN THE MATTER OF THE INVOLUNTARY )  
TERMINATION OF PARENT-CHILD )  
RELATIONSHIP OF K.T.R, a Minor Child, and )  
MARLON REED, Father, )

MARLON REED, )

Appellant-Respondent, )

vs. )

No. 49A02-0608-JV-622

MARION COUNTY DEPARTMENT OF )  
CHILD SERVICES, )

Appellee-Petitioner, )

and )

CHILD ADVOCATES, INC., )

Appellee-Guardian ad Litem. )

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APPEAL FROM THE MARION SUPERIOR COURT

The Honorable Scott Stowers, Magistrate

Cause No. 49D09-0502-JT-4871

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**June 14, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**MAY, Judge**

Marlon Reed appeals the termination of his parental rights to his son, K.T.R. We affirm.

**FACTS AND PROCEDURAL HISTORY**

Tonya Snapp tested positive for cocaine when she gave birth to K.T.R. on March 24, 2004. On March 31, 2004, the Marion County Department of Child Services (“DCS”) filed a Child In Need of Services (“CHINS”) petition as to Reed and Snapp, and removed K.T.R. from Snapp’s custody.<sup>1</sup> K.T.R. was placed with maternal relatives where he remains. The CHINS petition alleged Reed was K.T.R.’s father and had not “successfully demonstrated to the [DCS] the ability or willingness to appropriately parent [K.T.R.]” (Ex. at 2.) On May 6, 2004, the trial court ordered Reed to establish paternity and to participate in services including home-based counseling, parenting classes, a drug and alcohol assessment, and any recommended substance abuse treatment.

In June 2004, Reed and his fiancée Stephanie Taylor were arrested on drug-related charges. In January 2005, Reed was charged with domestic battery; he remained in jail until March 2005 when the charges were dismissed. In the interim, on February 9, 2005, DCS filed a petition to terminate Reed’s rights to K.T.R.

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<sup>1</sup> The record suggests Reed was out of the state at the time K.T.R. was removed from Snapp’s custody.

The first hearing on termination was in June 2005. In August 2005, as a result of his June 2004 arrest, Reed pled guilty to dealing cocaine as a Class B felony<sup>2</sup> and was sentenced to six years in community corrections. He was placed on house arrest while awaiting placement in a work-release program. The second termination hearing was held in September 2005. In October 2005, Reed tested positive for cocaine.<sup>3</sup> The third termination hearing was in January 2006. In April 2006, Reed was placed in a work-release program. He could leave the facility only to go to work and could visit K.T.R. only one hour per day. The final termination hearing occurred on June 5, 2006. At that time, Reed was eligible for a pass that would allow him to spend a four-hour block of time each week at his home for family interaction time.

On July 17, 2006, the trial court terminated Reed's parental rights in an order that included only the following general findings:

1. The child was found to be a Child In Need of Services under cause number 49D090403JC000568.
2. At the dispositional hearing, the Court determined it was in the best interest of the child to remain in the wardship of the [DCS].
3. The child has been removed from the parent, Marlon Reed (Father) for at least six (6) months under the dispositional decree.
4. There is a reasonable probability that the conditions which resulted in the removal of the child will not be remedied, that the conditions which require continued placement outside the home will not be remedied and that continuation of the parent-child relationship poses a threat to the child's well being.
5. Termination of the parent-child relationship is in the best interests of [K.T.R.].

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<sup>2</sup> Ind. Code § 35-48-4-1.

<sup>3</sup> The results of this drug screen were not admitted during the termination proceedings. However, testimony regarding the positive drug screen was admitted.

6. [DCS] has a satisfactory plan for the care and treatment of the above named child.

(App. at 17.)<sup>4</sup>

### DISCUSSION AND DECISION<sup>5</sup>

Reed argues the evidence was not sufficient to support the termination of his parental rights to K.T.R. He challenges the conclusion the conditions that led to K.T.R.'s placement outside his custody would not be remedied, the continuation of the parent-child relationship poses a threat to K.T.R.'s well-being, and termination was in K.T.R.'s best interest.

The Fourteenth Amendment to the United States Constitution protects the traditional rights of parents to establish a home and raise their children. *Bester v. Lake County Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005) (citing *Pierce v. Society of Sisters*, 268 U.S. 510, 534-35 (1925); *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923)). A parent's interest in the care, custody, and control of his children is "perhaps the oldest of the fundamental liberty interests." *Id.* (quoting *Troxel v. Granville*, 530 U.S. 57, 65 (2000)). However, parental interests are not absolute and must be subordinated to the child's interests in determining whether to terminate parental rights.

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<sup>4</sup> Snapp's parental rights to K.T.R. were terminated at the same time.

<sup>5</sup> Reed also asserts he was denied his due process rights when "his parental rights were terminated following the issuance of a CHINS disposition that failed to make specific findings and failed to put him on notice as to what he needed to do to get his son back." (Appellant's Br. at 1.) This allegation of error is waived because a party may not raise an issue for the first time on appeal. *In re K.S.*, 750 N.E.2d 832, 834 n.1 (Ind. Ct. App. 2001). Waiver notwithstanding, we note the court incorporated the DCS's pre-dispositional report as the findings of the court and the participation decree required Reed to participate in various services.

*Id.* Parental rights may be terminated when the parents are unable or unwilling to meet their parental responsibilities. *Id.*

When a parent appeals the termination of his parental rights, we will not reverse the trial court's judgment unless it is clearly erroneous. *Id.* We may not reweigh the evidence or reassess the credibility of the witnesses. *Id.* We consider only the evidence and reasonable inferences therefrom that support the judgment. *Id.*

To effect the involuntary termination of a parent-child relationship, the DCS must establish that:

- (A) one (1) of the following exists:
  - (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;
- \* \* \* \* \*
- (B) there is a reasonable probability that:
  - (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
  - (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;
- (C) termination is in the best interests of the child; and
- (D) there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 31-35-2-4(b)(2). These elements must be proved by clear and convincing evidence. Ind. Code § 31-34-12-2. Reed challenges the court's conclusions under the second and third prongs of this statute.

To determine whether there is a reasonable probability that conditions justifying a child's continued placement outside the home will not be remedied, "the trial court must judge a parent's fitness to care for [his] children at the time of the termination and take into consideration evidence of changed conditions." *In re J.T.*, 742 N.E.2d 509, 512 (Ind.

Ct. App. 2001), *trans. denied sub nom. Timm v. Office of Family & Children*, 753 N.E.2d 12 (Ind. 2001). The trial court must also “evaluate the parent’s habitual patterns of conduct to determine the probability of future neglect or deprivation of the child.” *Id.* The trial court may consider the services offered by the DCS to the parent and the parent’s response to those services. *Id.* “A court need not wait until a child is irreversibly harmed such that his physical, mental, and social development is permanently impaired before terminating a parent-child relationship.” *Id.*

Reed argues the DCS did not present evidence he was unwilling to deal with parenting problems or engage in social services. He admits he had “some criminal history and there was a question about his living situation given his placement in work release.” (Appellant’s Br. at 12.) Nonetheless, Reed argues, the DCS failed to prove these concerns could not be remedied because his sentence is finite, he would soon be able to visit K.T.R. at home for longer periods of time, and his wife would be able to care for K.T.R. while he was in the work release program. The DCS responds the evidence “clearly demonstrates a reasonable probability that [Reed’s] pattern of illegal drug use and criminal activity is likely to continue.” (Br. of Petitioner-Appellee at 13.) Given our standard of review, we must agree with the DCS.

Reed was convicted of possession of marijuana and possession of cocaine in 2000 and received a suspended sentence. In June 2004, he was arrested for domestic battery but the charge was dismissed. Also in June 2004, he was arrested on drug-related charges as noted above. In January 2005, he was arrested for domestic battery and, again, the charge was dismissed. Reed admitted he has used marijuana and cocaine, and

has been treated for drug addiction. Reed tested positive for drugs once during the CHINS and termination proceedings. Dr. Johnson conducted a drug and alcohol assessment of Reed and opined Reed “does minimize any chemical dependency problems.” (Ex. at 18.) This supports the trial court’s determination the conditions leading to K.T.R.’s removal are unlikely to be remedied.

Reed also argues “the totality of the evidence does not support a determination that termination was in the children’s [sic] best interest.” (Appellant’s Br. at 13.) The DCS responds that K.T.R.’s “need for permanency, coupled with Mr. Reed’s failure to recognize his substance abuse problem and his inability to care for [K.T.R.] due to his work release program for dealing in cocaine, clearly demonstrates that termination is in the best interest of [K.T.R.].” (Br. of Petitioner/Appellee at 18.) Again, we must agree with the DCS.

Because of the circumstances of K.T.R.’s birth, Reed’s drug-related history cannot be taken lightly. *See Bester*, 839 N.E.2d at 152. Rather, the trial court had to consider Reed’s habitual pattern of conduct to determine whether there is a probability of future problems. *See id.* About one month after the court issued a participation decree in the CHINS case, Reed and Taylor were arrested for dealing cocaine. Six months after the petition to terminate his parental rights was filed, Reed pled guilty to dealing cocaine and received a six-year sentence in community corrections. Two months later—over eighteen months after K.T.R. had been removed from parental custody—Reed tested positive for cocaine. Before the third termination hearing, Reed married Taylor, who had also pled guilty to dealing cocaine. Reed would be limited in the amount of time he could spend

with K.T.R. while on work release. The substance abuse counselor testified Reed minimized his drug usage, and opined, based on the positive drug screen, Reed's prior drug treatment "didn't hold." (Tr. at 226.) We conclude termination of Reed's parental rights are in K.T.R.'s best interest.

Because the trial court's decision was not clearly erroneous, we affirm.

Affirmed.

SHARPNACK, J., and BAILEY, J., concur.